

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-22420-2017 (O&M)
Date of decision: 05.02.2020

Satish Kumar

...Petitioner(s)

V/s.

State of Haryana and others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE RITU BAHRI.

Present: Mr. Rohit Ahuja, Advocate
for the petitioner.

Mr. Randhir Singh, Advocate
for State of Haryana.

RITU BAHRI, J. (Oral).

By this petition, the petitioner is seeking regularization of his services as per policy dated 01.10.2003 (Annexure P-3).

The petitioner was engaged as Beldar cum Mali on 01.01.1992 and his services were illegally terminated by the respondents on 01.10.1996. The petitioner raised industrial dispute and vide labour Court award, he was reinstated with continuity of service and no backwages. This award has attained finality as it was never challenged by the Department. This fact has not been disputed by the respondents in the written statement. As per the labour Court award (Annexure P-1), the initial date of appointment of the petitioner is shown to be 01.07.1994. However, the date of appointment is mentioned as 01.08.1995 in the written statement. Hence, the case of the petitioner has to be considered as per policy dated 01.10.2003 (Annexure P-3).

Learned counsel for the petitioner has placed on record regularization orders (Annexure P-3/A) of similarly situated employees whose services have been regularized w.e.f. 01.10.2003. He has further referred to judgment passed in ***CWP-19932-2013 titled as Raj Kumar V/s. State of Haryana and others***, filed by junior of the petitioner whose services were regularized w.e.f. 01.10.2003 after considering his date of appointment as 01.02.1995 and continuity of service vide labour Court award. This order has been complied by the Department.

On notice of this petition, written statement on behalf of respondents No. 1 to 3 has been filed. As per para 7, the services of the petitioner have been regularized w.e.f. 18.06.2014 under the policy dated 18.06.2014 vide order dated 17.11.2014 (Annexure R-1).

Heard learned counsel for the parties.

The petitioner is seeking direction to the respondents to regularize his services at par with similarly situated employees under the policy dated 01.10.2003 (Annexure P-3) keeping in view that once he was granted continuity of service as per labour Court award he fulfills all the conditions of regularization policy dated 01.10.2003 (Annexure P-3). This aspect has already been considered by this Court in ***CWP-11224-2015 titled Lekhu Raj V/s. State of Haryana and others*** that once the labourer has been given benefit of continuity of service by the Labour Court award, he is deemed to be in service from the date of termination till passing of award and then his case has to be considered as per the policy prevailing at that time.

Further the Department is bound to maintain parity with respect to all the employees and this aspect has already been considered by Hon'ble

the Supreme Court in *Hari Nandan Prasad and another V/s. Employer I/R to Management of FCI and another*, 2014(2) SCT 234. In para 34, the Supreme Court has observed as under:-

“34. On harmonious reading of the two judgments discussed in detail above, we are of the opinion that where there are posts available, in the absence of any unfair labour practice the Labour Court would not give direction for regularisation only because a worker has continued as daily wage worker/adhoc/temporary worker for number of years. Further, if there are no posts available, such a direction for regularisation would be impermissible. In the aforesaid circumstances giving of direction to regularise such a person, only on the basis of number of years put in by such a worker as daily wager etc. may amount to backdoor entry into the service which is an anathema to Article 14 of the Constitution. Further, such a direction would not be given when the concerned worker does not meet the eligibility requirement of the post in question as per the Recruitment Rules. However, wherever it is found that similarly situated workmen are regularised by the employer itself under some scheme or otherwise and the workmen in question who have approached Industrial/Labour Court are at par with them, direction of regularisation in such cases may be legally justified, otherwise, non-regularisation of the left over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Article 14 of the Constitution. Thus, the Industrial adjudicator would be achieving the equality by upholding Article 14, rather than violating this constitutional provision.”

Keeping in view above observations, writ petition is allowed and direction is being given to the respondents to regularize services of the petitioner in terms of policy dated 01.10.2003 (Annexure P-3) with all consequential benefits alongwith 6% interest and pass appropriate order

within three months from the date of receipt of certified copy of this order
and this Court be informed of the orders passed.

Pending application stands disposed of.

(RITU BAHRI)
JUDGE

05.02.2020
Divyanshi

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No